Supreme Court, U.S.
FILED
JUN 3 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

NO. 86-1884

JAMES A. GORDON, JR.,

Petitioner,

vs.

WILLIAM W. DAVIS, et al,

Respondents.

SUPPLEMENTAL PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JAMES A. GORDON, JR.
Petitioner in Pro Se
4300 Sutro Avenue
Los Angeles, CA 90008
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8 pp

APPENDIX

DISTRICT COURT ORDER

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Entered:

12/9/85

JAMES A. GORDON, JR., Plaintiff, v. WILLIAM W. DAVIS, et al Defendants.	NO. CV 85-4251 ER(JRx) ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT

This matter came before the Honorable Edward Rafeedie, United States District Judge, on November 12, 1985 on defendants' motion to dismiss the first amended complaint. After considerating all arguments, written and oral, the court dismissed plaintiff's complaint with prejudice.

PARTIES

The plaintiff is James A. Gordon, who was disbarred by the California Supreme

Court on July 1, 1982. The defendants are William W. Davis, a staff attorney for the State Bar of California; Robert K. Scott, an investigation referee for the State Bar court; State Bar of California; the State of California; Laurence P. Gill, Court Clerk to the California Supreme Court; and the following members of the California Supreme Court: Honorable Rose Bird; Honor- Stanley Mosk; Honorable Otto Kaus; Honorable Allen Broussard; Honorable Cruz Reynoso; Honorable Joseph Grodin; and Honorable Malcolm M. Lucas.

Plaintiff seeks a mandatory injunction ordering the defendants to reinstate his right to practice law in the State of California, as well as damages.

Pursuant to Federal Rule of Civil Procedure 12(b)(1) dismissal is proper as to all defendants for lack of subject matter jurisdiction. Federal Courts lack subject

matter jurisdiction to entertain challenges to final state disciplinary orders. MacKay v. Nesbett, 412 F. 2d 846 (9th Cir. 1969); U.S. cert. denied at 396 U.S. 960, 396 U.S. 1004. See also, Mayes v. Honn, 542 F.2d 822, (10th Cir. 1976).

An alternative basis for granting defendants' motion to dismiss as to the State of California, the California Supreme Court, the State Bar of California and defendants Davis and Scott, is the Eleventh Amendment. With regard to the State of California and the California Supreme Court, when the state or one of its agencies is named as a defendant, regardless of the relief sought, the Eleventh Amendment acts as a bar to suit. Pennhurst State School and Hospital v. Halderman, 104 S.Ct. 900 (1984). Likewise, because the State Bar is a constitutional agency in the judicial branch of the government which acts as an

administrative arm of the California Supreme Court, the Eleventh Amendment immunity applies. O'Connor v. State of Nevada, 686 F.2d 749 (9th Cir. 1982). Lastly, the Eleventh Amendment is also a bar to suit against state officers, Scott and Davis. Edelman v. Jordan, 94 S.Ct. 1347, 1355 (1974).

In addition, dismissal is proper with respect to the individual members of the California Supreme Court pursuant to Federal Rule of Civil Procedure 12(b)(6). In a §1983 action, absolute immunity applies to judges performing their judicial functions. Pierson v. Ray, 386 U.S. 547, 554-555 (1967).

Accordingly, the court hereby

ORDERS that this action be dismissed with prejudice as to all defendants.

The Court further orders the Clerk to serve copies of this Order on all parties

by the United States mail.

DATED: December 5, 1985.

/s/ Edward Rafeedie
EDWARD RAFEEDIE

United States District Judge

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AFFIDAVIT OF SERVICE

I hereby declare that on the 29th day of May 1987, I served three copies of the Supplemental Petition for Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit by enclosing them in a sealed envelope, postage prepaid, in the U.S. Mail at Los Angeles, CA addressed as follows:

JOHN K. VAN DE KAMP, Attorney General
State of California
HENRY G. ULLERICH, Supervising Deputy
3580 Wilshire Boulevard
Los Angeles, California 90010

HERBERT M. ROSENTHAL
ROBERT M. SWEET
General Counsel, California State Bar
1230 West 3rd Street
Los Angeles, California 90017

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California on the 29th day of May 1987.

JAMES A. GORDON, JR.
Petitioner in Pro Se